

insufficient to pay the arrearages due upon the annuity, and consequently it follows, if these proceeds are to be applied to its payment in the first instance, nothing will be left applicable to the legacy.

This is the conclusion to which I have arrived, after a careful consideration of the voluminous proceedings in this case, and as the account C., filed on the 30th of October last, is stated according to my views of the case, as herein expressed, I shall ratify that account, in which, it seems to me, I shall be acting in accordance with what has been repeatedly done by those who have gone before me, a number of accounts having been so stated by the proper officer and ratified by my predecessors in office.

JOHN S. McKIM AND OTHERS }

vs.

S. J. K. HANDY AND OTHERS. }

MARCH TERM, 1848.

[CONSTRUCTION OF WILL—TRANSMISSION OF TRUST—APPOINTMENT OF TRUSTEES  
—COUNSEL FEES—LEGACY TO FEMALE INFANTS, WHEN PAYABLE.]

A TESTATOR devised real and personal estate to certain trustees, "to them and the survivor of them, and the heirs, executors, and administrators of the survivor" in trust "that the said trustees or the survivor of them, or the person or persons who may succeed them in the trust," may from time to time change the investments of the stocks and the proceeds thereof "with any accumulations of the fund generally." to reinvest, &c. **HELD—**

That it was the intention of the testator that the real and personal estate should remain in the same hands, and the trust was not transmitted to the executor of the surviving trustee, but the whole trust became vacant upon his death.

The recommendations of parties with reference to numbers, amount of interest and reasons assigned, will always be attended to upon the question of selecting a trustee, though the court is not bound by such recommendations.

Where trustees are entitled to costs out of the fund, they will be taxed as between solicitor and client, and if a trustee finds it necessary to employ counsel as to the proper management of the estate, he will be allowed such reasonable fees as he may have paid, but counsel fees paid by the successful party, in a contest as to who shall administer the trust, will not be allowed out of the fund.

A testator devised certain property in trust, and directed the trustees to pay to each of his grandchildren born and to be born, the sum of one thousand dol-